

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA HOUSING FINANCE AUTHORITY

In the Matter of the Revenue Recapture
of Corinne Bowers

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

The above-captioned matter came on for a hearing before Administrative Law Judge James E. LaFave on October 31, 2012, at the Office of Administrative Hearings. Darryl J. Henchen, Assistant Attorney General, appeared on behalf of the Minnesota Housing Finance Agency (MHFA). The Respondent, Corinne Bowers, did not appear.

STATEMENT OF THE ISSUES

- I. Whether the Respondent is in default of the terms and conditions of the Note which she executed and is required to repay the monies received?
- II. Whether the MHFA is entitled to offset the amount owed by Respondent using revenue recapture in accordance with Minn. Stat. Ch. 270A?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent was served with the Notice and Order for Hearing on July 20, 2012. The Respondent was served by first-class mail with postage prepaid at 6845 Garfield Avenue South, Richfield, MN 55423, the last known address of the Respondent.
2. The Notice and Order for Hearing contained the following warning: "Respondent's failure to appear at the hearing or any prehearing conference may result in a finding that Respondent is in default, that the MHFA's allegations contained in this Notice and Order may be accepted as true, and that its propose action may be up held."
3. The Respondent failed to appear for the scheduled hearing, and did not make a prehearing request for a continuance or any other relief. The Respondent failed to appear without the prior consent of the Administrative Law Judge. The Respondent is, therefore, in default.

4. The allegations and issues set forth in the Notice and Order for Hearing are incorporated herein by reference in their entirety.

5. The Center for Energy and Environment (“CEE”) is a lender approved by MHFA to participate in the MHFA Fix-Up Fund Loan Program. CEE originates loans and then assigns them to MHFA.

6. Respondent applied to the MHFA, through CEE, for a Fix-Up Fund Loan, in the amount of \$33,030.54 (the “Loan”), to rehabilitate a single-family dwelling located in Richfield, Minnesota.

7. The Loan was made to Respondent by CEE, as evidenced by the MHFA Fix-Up Fund Loan Note, dated July 17, 2009, (The “Note”), and a Mortgage dated July 17, 2009, filed August 20, 2009, and recorded with the County Recorder for Hennepin County as Document Number A94009841 (The “Mortgage”). A copy of the note and a copy of the Mortgage were attached as Exhibit A and Exhibit B, respectively, to the Notice and Order for Hearing.

8. CEE originated and disbursed the Loan to the Respondent.

9. CEE endorsed the Note to MHFA and assigned the Mortgage to MHFA by Assignment of Mortgage, dated July 17, 2009, and recorded with the County Recorder of Hennepin County as Document Number A90409842 (the “Assignment”). A copy of the Assignment was attached as Exhibit C to the Notice and Order for Hearing.

10. The Loan requires 240 monthly payments of \$241.43 on the 17th day of each month, beginning on August 17, 2009.

11. Respondent's last payment on the Note was September 7, 2010. Respondent has failed to make any payments since that time.

12. The Respondent violated the terms and conditions of the Note and Mortgage by failing to timely repay the loan.

13. MHFA has requested that Respondent repay the Loan and Respondent has refused.

14. One of the collection methods available to MHFA to recover the outstanding Loan amount is through revenue recapture as authorized by Minnesota Statutes Chapter 270A.

15. MHFA provided notice to Respondent that it intended to recover the outstanding Loan amount through recapture by a letter dated May 25, 2012. A copy of the letter is attached to the Notice and Order for Hearing as Exhibit D.

16. Respondent requested to contest the validity of MHFA's revenue recapture by letter dated July 3, 2012. A copy of the letter is attached to the Notice and Order for Hearing as Exhibit E.

17. The balance of the Loan due and owing to MHFA as of July 31, 2012, is \$36, 039.27, according to an Affidavit of Jan Laansma, Senior Housing Development Officer of MHFA and payment history. The Affidavit of Jan Laansma and the payment history are attached as Exhibit F to the Notice and Order for Hearing.

18. According to Section 2 of Additional Terms of the Note, in the event of default by Respondent, Lender may accelerate the loan, foreclose the real property secured by the Mortgage, or “exercise any other legal rights Lender may have.”

19. MHFA is entitled to use revenue recapture to offset the amount owed by Respondent to MHFA pursuant to Minn. Stat. Ch. 270A.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1 The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 270A.09.

2 The MHFA gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3 The Respondent is in default under Minn. Rules part 1400.6000 because of her failure to appear at the hearing.

4 Under Minn. Rules part 1400.6000, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence when a party defaults.

5 The Respondent is in default of the terms and conditions of the Note.

6 That, as of July 31, 2012, the balance of Respondent’s loan due and owing to MHFA was \$36,039.27.

7 The Respondent is required to repay the monies she received.

8 MHFA is entitled to use revenue recapture to offset the amount owed.

9 That action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

The Minnesota Housing Finance Agency is entitled to use revenue recapture to offset the amount owed to it by Corinne Bowers.

Dated: November 29, 2012

s/James E. LaFave

JAMES E. LAFAVE

Administrative Law Judge

Reported: Digitally Recorded

NOTICE

Pursuant to Minn. Stat. § 270A.09, subd. 3, this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.